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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,308	06/24/2003	Robin Levien	P/1941-24	9013
2352	7590	07/08/2004	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/602,308	LEVIEN ET AL. <i>CR</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Hwei-Siu C. Payer	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 and 9-12 is/are rejected.
- 7) Claim(s) 8 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 6-24-2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6-24-2003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## Detailed Action

In the submission filed on 6-24-2003, the copy of the UK Search Report dated September 10, 2002 has not been received. Applicants are requested to provide a copy of the UK Search Report in response to this Office action.

### Objection to the Specification

The disclosure is objected to because of the following informalities:

- (1) Reference numeral "16" has been given two different designations as "fingers" (on page 5) and "blade" (on page 9).
- (2) Reference numeral "52" has been given two different designations as "dual curved blade" (on page 7) and "peeler" (on page 8).

Appropriate correction is required.

### Claims Rejection - 35 U.S.C. 102(b)

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Maskulka et al. (U.S. Patent No. 2,235,323).

Maskulka et al. disclose a peeler comprising an elongate blade (16) bent in its lateral dimension (see Fig.3) having at least one longitudinal opening (see Fig.5) extending along its length with a shape cutting region (17/18) adjacent the opening, the blade (16) having a pair of opposed sharp cutting regions (17,18) on opposite sides of the opening, and the blade (16) being pivotably secured at its opposite ends (see Fig.2) to allow a limited pivoting about its longitudinal axis (), wherein the blade (16) is of curved form in its longitudinal direction (see Figs.2 and 4) as claimed.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taormina (U.S. Patent No. 3,299,510).

Taormina discloses a peeler comprising an elongate blade (20) curved in its lateral dimension (see Fig.2) having at least one longitudinal opening (24) extending along its length with a shape cutting region (26) adjacent the opening (24), the blade (20) having a pair of opposed sharp cutting regions (26) on opposite sides of the opening (24), wherein the blade (20) is of curved form in its longitudinal direction (see Fig.1) as claimed.

#### **Claims Rejection - 35 U.S.C. 103(a)**

1. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maskulka et al. (U.S. Patent No. 2,235,323).

The peeler of Maskulka et al. as set forth shows all the claimed structure except it does not specifically mention the range for the radius of curvature of the blade in the longitudinal direction.

However, the claimed range for the radius of curvature is not patentable distinct over Maskulka et al. since such range depends more upon the outer contour of a workpiece (i.e. fruit or vegetable) to be skinned than on any inventive concept.

Further, to select a certain range such as claimed 30 to 150 mm for the radius of curvature of Maskula et al. would have been obvious to one having ordinary skill in the art, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233 (CCPA 1955).

4. Claims 3-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taormina (U.S. Patent No. 3,299,510).

Taormina's peeler as set forth shows all the claimed structure except it does not specifically mention the range for the radius of curvature of the blade in the longitudinal direction, and the range for the lateral curvature of the blade.

However, the claimed ranges for the radius of longitudinal curvature and for the lateral curvature are not patentable distinct over Taormina since such ranges depend more upon the outer contour of a workpiece (i.e. fruit or vegetable) to be skinned and outer contour of a sharpening wheel used for sharpening the blade than on any inventive concept.

### **Indication of Allowable Subject Matter**

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Prior Art Citations**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kapota, Adamec, Whann, Gamache, Greenidge, Yonezawa and Japan '41 are cited as art of interest.

### **Point of Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 703-308-1405. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 703-746-3293 for proposed amendments.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

H Payer  
July 3, 2004

*H-S. Payer*  
Hwa-Siu Payer  
Primary Examiner